



POISED TO STRIKE
against corruption

Special Investigating Unit

Final Report to the
President of the Republic of South Africa
His Excellency, President MC Ramaphosa
on

**The investigation conducted in respect of the procurement of, or
contracting for goods, works or services by or on behalf of the SABC
from Mafoko Security Patrols (Pty) Ltd.**

Proclamation R19 of 2018 amending Proclamation R29 of 2017

June 2019

DISTRIBUTION LIST

Copies to	Addressees:
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Copy 2 of 2	Advocate JL Mothibi: Head of the Special Investigating Unit

ABBREVIATIONS

LIST OF ABBREVIATIONS	
Abbreviation	Description
ACOO	Acting Chief Operating Officer
ACFO	Acting Chief Financial Officer
AGCEO	Acting Group CEO
AGSA	Auditor- General of South Africa
BAC	Bid Adjudication Committee
BBBEE	Broad Base Black Economic Empowerment
BEC	Bid Evaluation Committee
BSC	Bid Specification Committee
FIPT	Finance, Investment, Procurement and Technology Committee
GE	Group Executive
Mabotwane	Mabotwane Security (Pty) Ltd
Mafoko	Mafoko Security Patrols (Pty) Ltd
Mjayeli	Mjayeli Security (Pty) Ltd
National Treasury Instruction dated 31 May 2011	National Treasury Instruction Note on enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management dated 31 May 2011
National Treasury Practice Note 8 of 2007/2008	Practice Note 8 of 2007/2008: Threshold values for the procurement of goods, works and services by means of petty cash, verbal or written price quotations or competitive bids
National Treasury Practice Note 2 of 2005	Practice Note SCM 2 of 2005: Threshold values for the procurement of goods and services by means of petty cash, verbal or written price quotations and competitive bids
NPA	National Prosecuting Authority
NT	National Treasury

LIST OF ABBREVIATIONS	
PACOCOA	Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004
PFMA	Public Finance Management Act, Act No. 1 of 1999
PPPFA	Preferential Procurement Policy Framework Act, Act No. 5 of 2000
PSA	Public Service Act, Act No. 103 of 1994
RFP	Request for Proposal
SABC	South African Broad Casting Corporation
SABC Board	The Board of the SABC referred to in section 12 of the Broadcasting Act, Act No. 4 of 1999
SABC Interim Board	The Board of the SABC referred to in section 15A (3a) of the Broadcasting Act, Act No.4 of 1999
SABC Group Executive Committee	EXCO
SCM Procedures Manual dated 1 September 2016	SABC Supply Chain Manual Procedures Manual dated 1 September 2016
SIU	The Special Investigating Unit established by Proclamation R118 of 31 July 2001 under section 2(1) of the SIU Act
SIU Act	Special Investigating Units and Special Tribunals Act, Act No. 74 of 1996
The Constitution	The Constitution of the Republic of South Africa, 1996
Treasury Regulations dated March 2005	Treasury Regulations for departments, trading entities, constitutional institutions and public entities, issued in terms of the Public Finance Management Act dated March 2005
TVOB	Television Outside Broadcast
VAT Act	Value-Added Tax Act, Act No. 89 of 1991

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EXECUTIVE SUMMARY

The Special Investigating Unit (“SIU”) was mandated in terms of Proclamation No. R29 of 2017, as published in the Government Gazette on 1 September 2017, and extended by Proclamation No. R19 of 2018, published on 6 July 2018 to include the investigation of the award of the SABC Security Contract.

This is a final Report on the SABC Security Contract investigation conducted in respect of Proclamation No. R19 of 2018 and details the SIU findings on the focus of the investigation.

The SIU submitted an Interim Report to the Presidency on 30 November 2018 which summarised the findings, recommendations and outcomes of the investigation into the procurement of, or contracting for goods, works or services by or on behalf of the SABC from Mafoko Security Patrols (Pty) Ltd (“Mafoko”). The detailed findings are discussed in more detail under paragraph 5 (“Summary of Findings and Outcomes”) below.

In summary, the SIU found evidence which indicated that there were irregularities in the procurement of the services from and subsequent awarding of the contract to Mafoko by the Interim Board of the SABC to the value of R185 519 426.61. Although the Interim Board approved an additional R8 831 252.54 in lieu of the delay in the adjudication of the tender, the contract that was eventually signed was to the value of R185 519 426.61. In essence, the SIU’s investigation found that the BEC was irregularly constituted, there was financial misconduct and contravention of sections 83(1)(b) and 86(3) of the PFMA on the part of the Interim Board. As an accounting authority they failed to act in the best interest of the SABC. There was also a contravention of sections 83(3) of the PFMA in respect of the officials of the SABC who were present when the Interim Board made a decision to award the contract to Mafoko.

As a result of these findings the SIU launched a joinder application on 12 March 2019 to join as a party in the current proceedings between Mjayeli and SABC, and that application was successful. The SIU now seeks to have the contract between the SABC and Mafoko reviewed and set aside and that the tender be remitted for reconsideration. The SIU also seeks the court to make a just and equitable order in an effort to recover monies that have been lost due to this irregular contract.

Details of the outcomes of the individual matters investigated include the following:

Criminal referral: The SIU made criminal referrals on 14 May 2019 to the National Prosecuting Authority in terms of section 86(2) of the PFMA against the members of the Interim Board, as per the findings of our investigation which revealed irregularities in the contract awarded to

Mafoko. The implicated members are K Kweyama, MG Tsedu, J Matisohn, K Naidoo, FC Potgieter-Gqubule, T Ralitabo, BL Tugwana and TS Dlamini.

Civil recovery: The SIU has succeeded in bringing an application to be joined in the current proceedings between Mjayeli (the bidder that was not awarded the contract) and the SABC, as a Respondent party, to seek an order to set aside the contract between Mafoko and the SABC and to have the tender remitted for reconsideration by the SABC. This relief is consistent with the findings of the SIU and the SIU is opposed to an application by Mjayeli to have the contract awarded to Mjayeli. The SIU is in the process of filing its answering affidavit.

Disciplinary referral: The SIU has made a disciplinary referral on 14 May 2019 to the SABC in respect of one executive director, Ms TS Dlamini, who was present when the Interim SABC Board decision was made to appoint Mafoko as a preferred service provider, for contravening section 83(3) of the PFMA and SABC policies and failing to act in the best interest of the SABC. Other executive directors who were also present are no longer in the employ of the SABC. SIU had intended to make a referral to the Minister in respect of the conduct of interim Board members but unfortunately such members have now resigned as members of the SABC Board.

Other referrals: Directors' declaration of delinquency or placement on probation: The SIU intends bringing an application in terms of section 162 of the Companies Act, to declare the Interim Board members delinquent or to place them under probation, once the civil proceedings are finalised, due to their breach of their fiduciary duties, by their gross negligently in causing harm to the SABC and failing to act in the best interest of the SABC. In terms of section 162 of the Act, the directors that have left the SABC will not escape liability as the application may be brought against them if they were directors in the 24 months preceding the application.

Any other referral that will be identified will be made and a final update will be included in the final report to the President on all SABC investigations.

1. SUMMARY OF OUTCOMES

1.1 Evidence referred for the institution or defence of civil proceedings

The SIU has succeeded in bringing an application to court to be joined as a party in the current proceedings between Mjayeli and the SABC. The SIU seeks an order to set aside the contract between the SABC and Mafoko Security Patrols. The value of the contract is R185 519 425.67 but an additional R8 831 252.54 in lieu of the delay in the adjudication of the tender was approved by the interim Board, even though the actual contract signed was to the value of R185 519 425.67. As part of the court proceedings, the SIU also seeks a just and equitable order seeking to recover monies lost by the SABC.

1.2 Referrals to the relevant Prosecuting Authority

The SIU has made a referral to the NPA on 14 May 2019 in terms of section 86(2) of the PFMA, for criminal action against the former accounting authority who in this matter were the directors of the Interim SABC Board who allegedly committed a financial misconduct in committing the SABC to a contract that was irregularly awarded. The implicated members are K Kweyama, MG Tsedu, J Matisohn, K Naidoo, FC Potgieter-Gqubule, T Ralitabo, BL Tugwana and TS Dlamini.

1.3 Referrals made for disciplinary, executive and/or administrative action

The SIU intends to refer the matter to the current chairperson of the SABC Board with a recommendation to bring an application under Section 162 of the Companies Act of 2008, to declare the former Directors of the Interim SABC Board delinquent directors and or to have them placed under an order of probation for failing to act in the best interest of the SABC. However, SIU will embark on this application jointly with the SABC upon the outcome of the current litigation between Mjayeli and the SABC. As a party in the current proceedings, SIU seeks the review and setting aside of the contract and the remittance of the tender for reconsideration by the SABC. It will be premature to bring an application of delinquency against the respective members of the interim Board until the litigation against the SABC has been finalised, as this will be added consideration to the SIU's intended declaratory application against the members.

The SIU has made a disciplinary referral on 14 May 2019 against one executive director, Ms TM Dlamini, who is still in the employ of SABC and who was present when the Interim Board's decision was made to appoint Mafoko as a preferred service provider, for contravening section 83(3) of the PFMA and thus failing to act in the best interest of the SABC. The three (3) former interim Board members who became members of the current Board have subsequently resigned on or about December 2018, therefore the SIU will not be making a referral to the shareholder in respect of their conduct, as was intended.

2. INTRODUCTION

2.1 Background

On 1 March 2018, the Head of the SIU was requested by the chairperson of the Board of the South African Broadcasting Corporation ("**SABC**"), Mr BE Makhathini, to investigate the award of the SABC tender for the provision of physical security services at Auckland Park and Television Outside Broadcast ("**TVOB**") to Mafoko.

The matter did not fall within the terms of reference of Proclamation No. R29 of 1 September 2017 which mandated the SIU to investigate certain affairs of the SABC.

The SIU entered into a Secondment Agreement on the 29 March 2018 with the SABC and also applied for an amendment to Proclamation No. R29 of 2017 which was published as Proclamation No. R19 of 2018 on 6 July 2018 and authorized the SIU to investigate the matter at hand.

This final report summarises the findings, recommendations and outcomes of the above matter that the SIU investigated to date.

The investigation into the allegations of corruption has been concluded and no evidence pointing to corruption has been uncovered.

2.2 The SIU's Mandate and scope of investigation

In terms of Presidential Proclamation R29 of 2017, as published in the Government Gazette on 1 September 2017, read together with the relevant provisions of the SIU Act, the SIU was (for the purposes of this investigation) mandated to investigate:

“any alleged—

- (a) serious maladministration in connection with the affairs of the SABC;*
- (b) improper or unlawful conduct by board members, officials or employees of the SABC (hereinafter referred to as “the personnel of the SABC”);*
- (c) unlawful appropriation or expenditure of public money or property;*
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;*
- (e) intentional or negligent loss of public money or damage to public property;*
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the SABC; or*
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,*

which took place between 1 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the SABC or the State, in relation to the said matters in the Schedule.”

The nature of *“the matters mentioned in the Schedule”* (which are reported on herein), is apparent from the wording of the Schedule, which reads as follows:

“1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, SekelaXabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd and Mott MacDonald (Pty) Ltd and payments made in respect thereof, in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;*
- (b) contrary to applicable—*
 - (i) legislation;*

- (ii) *manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or*
- (iii) *manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,*

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.

2. *Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to—*

- (a) *the mismanagement of the finances, rights, assets or liabilities of the SABC;*
- (b) *the selling of assets or rights which were owned by the SABC which was not to the advantage of the SABC;*
- (c) *business transactions that were concluded by or on behalf of the SABC and which were not viable or to the advantage of the SABC;*
- (d) *the irregular appointment and promotion of staff; or*
- (e) *the payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable—*
 - (i) *legislation; or*
 - (ii) *manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC*

including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State.

3. *Any undisclosed or unauthorised interest that certain members of the personnel of the SABC may have had with regard to —*

- (a) *contractors, suppliers or service providers who bid for work or did business with the SABC; or*
- (b) *contracts awarded by or on behalf of the SABC.”*

In terms of Presidential Proclamation No. R19 of 2018 on 6 July 2018, an amendment of Proclamation No. R29 of 2017, and authorized the SIU to investigate the matter as published in Government Gazette number 41754,

“Under section 2(4) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), I hereby amend Proclamation No. R. 29 of 2017, by—

- (a) the further extension of the period referred to in the fourth paragraph of the Proclamation to the date of publication of this Proclamation; and*
- (b) the substitution for paragraph 1 of the Schedule to the Proclamation of the following paragraph:*

“1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, Sekela Xabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd, Mott MacDonald (Pty) Ltd and Mafoko Security Patrols (Pty) Ltd and payments made in respect thereof, in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective; (b) contrary to applicable—*
 - (i) legislation;*
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or*
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,*

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.”

2.3 Objectives of the investigation

The primary objectives of this investigation were to:

- Review compliance with the prescribed legislative/policy frameworks and contractual terms in respect of the procurement of services from Mafoko;
- Identify and review payments made in respect of the procurement of services from Mafoko, confirm compliance with the prescribed legislative, policy and contractual terms and conditions;
- To investigate allegations of corruption;
- Take steps to effect recoveries in respect of any identified irregular and/or fruitless and wasteful expenditure;

- Facilitate disciplinary action in respect of identified officials;
- Assist or facilitate any criminal investigation and prosecution relating to any act of fraud/theft and/or corruption and maladministration (in partnership with the NPA, SAPS and AFU); and
- Undertake a systemic review and make associated recommendations.

2.4 Limitations

The report is based on the facts established from documentation provided and information obtained during the course of the investigation. Although all reasonable attempts were made to obtain the relevant information, the SIU cannot and does not guarantee that it has had sight of all relevant documentation. The SIU cannot further confirm that it has been given access to all information that may be in existence, or that the contents of any documentation at its disposal or any statements or information obtained by or made available to it, are true and correct.

Should any further information become available, or should any of the contents of any documentation or statements or information at its disposal not be true or correct, it may influence the SIU's conclusions and recommendations. In such circumstances, the SIU will apprise the President accordingly in future reports.

3. LEGISLATIVE FRAMEWORK

3.1 The Constitution of the Republic of South Africa, 1996 ("the Constitution")

Section 217 of the Constitution stipulates that *"when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."*

The Constitution further stipulates that subsection (1) *"does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –*

- (a) categories of preference in the allocation of contracts;*
- (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."*

3.2 Public Finance Management Act, 1999 (Act No 1 of 1999) ("PFMA")

The PFMA defines "fruitless and wasteful expenditure" as "*expenditure made in vain, which could have been avoided had reasonable care been exercised.*"

The PFMA further stipulates to the effect that wilful or negligent failure to comply with general and/or delegated responsibilities constitutes financial misconduct. Section 51 ((b)(ii) states that

"an accounting authority for a public entity—

(b) must take effective and appropriate steps to—

- (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and*

In terms of section 83 of the PFMA: Financial misconduct by accounting authorities and officials of public entities:

- (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently-*
 - (a) fails to comply with a requirement of section 50, 51, 52, 53, 53 or 55*
 - (b) makes or permits an irregular expenditure or fruitless and wasteful expenditure.*
- (2) If the accounting authority is a Board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.*
- (3) An official of a public entity to whom a power or duty is assigned, in terms of section 56, commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.*

In terms of section 86(2) of the PFMA:

"An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 5 years, if that accounting authority wilfully or in a grossly negligent way fails to comply with section 50, 51 or 55."

3.3 Preferential Procurement Policy Framework Act No. 5 of 2000 ("PPPFA")

This Act gives effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith. The Act is applicable to the procurement of goods and/or services by all organs of State.

The matter is further regulated by section 2(1)(f) of the PPPFA which provides that:

“the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to those contemplated in paragraph (d) and (e) justify the award to another the tenderer”

“Clause (d) provides that the specific goals may;

(i) include contracting with the person or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

(ii) implementing the programmes of the Reconstruction and Development Programme as published in the Government Gazette.

Clause (e) provides that any specific goals for which a point may be awarded must be clearly specified in the invitation to submit a tender”.

3.4 The Companies Act, Act No. 71 of 2008

Section 162: Application to declare director delinquent or under probation:

Section 162 (2) states that: *A company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if—*

(a) the person is a director of that company or, within the 24 months immediately preceding the application, was a director of that company; and

(b) any of the circumstances contemplated in—

(i) subsection (5) (a) to (c) apply, in the case of an application for a declaration of delinquency; or

(ii) subsections (7) (a) and (8) apply, in the case of an application for probation.

In terms of section 162(5)(c), *a court must make an order declaring a person to be a delinquent director if the person while a director-*

(i) grossly abused the position of director;

(ii) took personal advantage, inflicted harm upon the company or a subsidiary of the company, contrary to section 76(2)(a);

(iii) acted in a manner-

(aa) that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company; or

(bb) contemplated in section 77(3)(a), (b) or (c).

4. SABC SUPPLY CHAIN MANAGEMENT PROCEDURE MANUAL, 2016

In terms of paragraph two of section 5.6 (i) of the SABC SCM Procedures Manual, relating to the BEC, the BEC must be composed in the following manner:

"The composition of the Bid Evaluation Committee will vary depending on the nature and complexity of the specific project but should at all times have a minimum of three (3) individuals. For more complex projects, strategic projects or projects of a value above R10 million, the members of the BEC must be senior managers in the employ of the SABC. The Bid Evaluation Committee should always include a representative from SCM and the Business Unit concerned. A representative from Legal must be included for high value and strategic bids."

In terms of section 9.10.f.2(d) of the SABC's SCM Procedures Manual relating to functionality evaluation and scoring, moderation of the BEC scores can take place under the following circumstances:

"Where there are significant differences in scoring of a particular criterion, then the team members will discuss this amongst themselves, as this may indicate a misunderstanding or an error in the assessment. If this is the case, then the evaluator will be able to amend his score at this point. Such evaluator is however not obligated to amend his score..."

5. SUMMARY OF FINDINGS AND OUTCOMES IN RESPECT OF MAFOKO SECURITY PATROLS (PTY) LTD

The SIU's investigation focused on the second of the two tender processes with a review of the first tender process. We will deal with the high level findings under each of the two tender processes. The SIU findings were set out in detail in the interim report submitted on 31 October 2018.

5.1 The First Tender Number RSK/APS0B/15/01

5.1.1 It deems mentioning that although the SIU perused and considered all available information and documentation with regards to this tender, a detailed investigation was

not conducted, as this matter has been comprehensively dealt with by the SABC. The SIU concurred with the final outcome of that process in which the tender was formally cancelled.

5.2 The Second Tender Number RFP/LOG/2017/3

- 5.2.1 As was previously reported in the SIU interim report, in the SABC Board resolution of 28 September 2016, approval was granted to the SABC Supply Chain Management (“SCM”) to issue a new bid for the provision of physical security at the SABC Auckland Park and TVOB.
- 5.2.2 The BSC convened a meeting on 17 January 2017 and the tender, RFP/LOG/2017/3, was advertised on 20 January 2017. A non-compulsory briefing session was held on 1 February 2017 and the closing date of the bid was 10 February 2017.
- 5.2.3 After the normal SCM process was followed, Mjayeli was recommended by the BEC as the highest scoring bidder and recommendations were made to appoint them as the preferred service provider. This recommendation was accepted by the Bid Adjudicating Committee and the SABC Group EXCO.
- 5.2.4 When this matter was referred to the SABC’s Finance, Investment, Procurement and Technology Committee (“FIPT”), the committee did not make a recommendation as to the acceptance of the recommendation of the preferred service provider as they needed more time to consider the matter. A resolution was made to reconvene at a later stage for their final recommendation. However, before the FIPT could reconvene and decide on the matter, the Interim SABC Board on 30 June 2017 made a decision to award the tender to the second highest scoring bidder, same being Mafoko. The most prevalent reason stated that they had a higher BBBEE status than Mjayeli. The contract was awarded for a period of five years, from 1 August 2017 to 31 July 2022, with a total value of **R185 519 425.61**.

5.3 Review of SCM process for Tender RFP/LOG/2017/3

- 5.3.1 The SIU conducted a review of the entire SCM process, which included the scrutinising of all available SCM documents and minutes and recordings of meetings in relation to this tender. Interviews were also conducted with various role players.

5.3.1.1 The SIU's findings to date include that the BEC was constituted irregularly in that it was inconsistent with the SABC SCM Procedures Manual dated 1 September 2016.

6. RIGHT OF REPLY LETTERS SENT TO BOARD MEMBERS

The Interim Board Members were each provided with an opportunity to submit their responses to the SIU's findings in this investigation. This is a standard procedure of the SIU when there are possible negative findings to be made against any person implicated in the SIU's report. In all instances, such persons are provided with the SIU adverse findings against them and afford them an opportunity to respond prior to the submission of the report to the President. They all submitted their replies to the SIU within the stipulated time. As a result of their response and the SIU findings in respect of a decision by the Board to award the tender to Mafoko, the SIU is pursuing the review and setting aside of the contract and the matter is pending in court.

The SIU investigated the allegations of corruption as reported by a whistle-blower against the Interim Board members, Ms Khanyisile Kweyama ("Ms Kweyama") and Mr Mathata Tsedu ("Mr Tsedu") as well as against an SABC official, Mr Simon Mathebula ("Mr Mathebula"). Other officials considered in the corruption investigation included Mr Simon Molaudzi ("Mr Molaudzi") and Ms Ayanda Mkhize ("Ms Mkhize").

The following information was obtained through the use of section 5 of the SIU Act:

- ITC requests from Transunion;
- Information from the Financial Intelligence Centre ("**FIC**");
- Telephone records;
- E-Natis; and
- Bank statements from financial institutions.

The information received were analysed for possible collusion and corrupt payments from either Mafoko or Mjayeli to any SABC officials or Board members.

The SIU's investigation did not reveal any evidence of a corrupt relationship as per the allegations received.

7. REMEDIAL ACTIONS TO FOLLOW ON COMPLETION OF THE SIU INVESTIGATION

- 7.1** The SIU's findings to date include that the BEC was constituted irregularly in that it was inconsistent with the SABC's SCM Procedures Manual dated 1 September 2016, as amended by Group EXCO Resolution No 20/04/2017-G2051. It is also our finding, based on the evidence collected thus far, that the Interim SABC Board decision to award the contract to Mafoko was irregular. The SIU intends to refer the matter to the current chairperson of the SABC Board with a recommendation to bring an application under Section 162 of the Companies Act of 2008, to declare the former Directors of the Interim SABC Board delinquent directors and or to have them placed under an order of probation for failing to act in the best interest of the SABC. The investigation has revealed that the Interim Board had irregularly awarded the security contract to the bidder that scored the second highest points, justifying their decision by using BBBEE level status, a factor that has already been evaluated as an objective criteria and which cannot be used as valid basis thereof. This action by the Board has been found to be wrongful and irregular. Even though they may have doubts about awarding the contract to the highest bidder, they were supposed to consider launching an investigation or cancel the tender or remitting it for reconsideration and they have failed to discharge their fiduciary duties in that respect and failed to act in the best interest of the SABC.
- 7.2** Since the findings have revealed that the manner in which the BEC was constituted was irregular, it is SIU opinion that this irregularity may form sufficient grounds to set aside the contract awarded to Mafoko as a nullity *ab initio*.
- 7.3** The SIU has successfully been joined in the current proceedings between Mjayeli Security and the SABC as the fifth respondent, as the SIU has vested interest in the matter.
- 7.4** As part of the court proceedings, the SIU as a fifth respondent party in the proceeding instituted by Mjayeli, seeks an order to review and set aside the decision by the SABC to award the contract, under Bid number RFP/LOG/2017/3, to Mafoko and to remit the tender for reconsideration by the SABC, as well as a just and equitable relief for the recovery of monies lost due to the irregularity in the awarding of this contract.
- 7.5** The SIU is intending to submit a referral and recommendations to the chairperson of the SABC Board, upon the outcome of the current proceedings, to bring an application, jointly with the SIU, under Section 162 of the Companies Act of 2008, to declare the

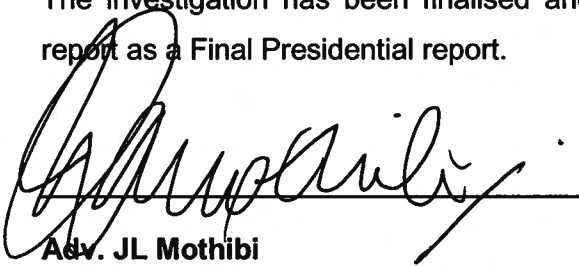
former Interim SABC Board delinquent directors or to have them placed under an order of probation for breach of their fiduciary duties and failing to act in the best interest of the SABC.

7.6 The SIU has made a referral to NPA on 14 May 2019 in terms of section 86(2) of the PFMA, for criminal action against the former accounting authority in this matter are the Directors of the Interim SABC Board due to financial misconduct committed by its members.

7.7 A disciplinary referral has been made on 14 May 2019 against an executive director, Ms TM Dlamini, who is still in the employ of the SABC and who was present when the SABC Interim Board's decision was made to appoint Mafoko Security as a preferred service provider, for contravening section 83(2) of the PFMA and SABC policies and for failing to act in the best interest of the SABC. Other executive members who were also present have subsequently resigned.

8. FINAL CONCLUSION AND SIGN OFF

The investigation has been finalised and findings have been made. The SIU is issuing this report as a Final Presidential report.



Adv. J.L. Mothibi

Head of the Special Investigating Unit

Date: 13 JUNE 2019.